

Constitution
of
New Zealand Oil & Gas
Limited

amended [12 December] 2019

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Constitution of New Zealand Oil & Gas Limited

NZ Reg Co No 037842

1. INTERPRETATION

1.1 Definitions: In this Constitution, unless the context otherwise requires:

“**Act**” means the Companies Act 1993;

“**Alternate Director**” has the meaning set out in clause 23;

“**ASX**” means Australian Stock Exchange Limited;

“**ASX Listing Rules**” means the Listing Rules of ASX and any other rules of ASX which are applicable to the Company while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any decision, determination, ruling or dispensation given by ASX affecting the application of the Listing Rules to the Company and subject to its listing agreement;

“**Board**” means Directors who number not less than the required quorum acting together as the board of Directors of the Company;

“**Class**” means a class of Financial Products having identical rights, privileges, limitations and conditions, and includes or excludes Financial Products which NZX in its discretion deems to be of or not of that Class;

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“**Company**” means **New Zealand Oil & Gas Limited**;

“**Constitution**” means this constitution, as altered from time to time;

“**Director**” means a person appointed as a director of the Company;

“**Distribution**” means:

- (a) the direct or indirect transfer of money or property, other than Shares, to or for the benefit of a Shareholder; or
- (b) the incurring of a debt to or for the benefit of a Shareholder,

in relation to Shares held by that Shareholder, whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness or by some other means;

“**Equity Security**” means an Equity Security as defined in the Listing Rules, which has been issued, or is to be issued, by the Company, as the case may require;

“**Financial Product**” has the meaning given in the Listing Rules;

“**FMC Act**” means the Financial Markets Conduct Act 2013;

“**Interest Group**”, in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and

(c) who comprise the holders of one or more Classes, except where action is taken in relation to some holders of Shares in a Class and not others, or a proposal expressly distinguishes between some holders of Shares in a Class and other holders of Shares in that Class, in which case the holders of Shares in that Class may fall into two or more interest groups.

“Listed” has the meaning given to it in the Listing Rules;

“Listing Rules” means the listing rules applying to the NZX Main Board and Debt Market in force from time to time;

“Managing Director” means a Director appointed by the Board to the office of managing director in accordance with clause 24 of this Constitution;

“NZX” means NZX Limited, its successors and assigns and as the context permits includes any authorised delegate of NZX (including the Tribunal);

“NZX Main Board” means the main board financial product market operated by NZX;

“Ordinary Resolution” means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question;

“Personal Representative” means:

- (a) in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
- (b) in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
- (c) in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act;

“Quoted” has the meaning given in the Listing Rules;

“Register” or “Share Register” means the share register of the Company required to be kept under section 87 of the Act;

“Relevant Interest” has the meaning given to it in section 6 of the FMC Act;

“Representative” means a person appointed as a proxy or a Personal Representative;

“Ruling” has the meaning given to it in the Listing Rules;

“Share” means a share issued, or to be issued, by the Company, as the case may require;

“Shareholder” means:

- (a) a person whose name is entered in the Share Register as the holder for the time being of one or more Shares; and
- (b) until the person’s name is entered in the Share Register, a person who is entitled to have that person’s name entered in the Share Register as a Shareholder under a registered amalgamation proposal in respect of which the Company is the amalgamated company;

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“Special Resolution” means a resolution approved by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the question;

“Treasury Stock” means Shares in the Company which have been acquired by the Company and are held by the Company as treasury stock in accordance with the Act and includes Shares in the Company held by a subsidiary of the Company other than in accordance with section 82(6) of the Act; and

“Tribunal” has the meaning given in the Listing Rules.

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1.2 **Construction:** In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to sections, clauses or paragraphs are to sections, clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or statutory instrument as from time to time amended or re-enacted or substituted;
- (d) a reference to a Listing Rule includes that Listing Rule as from time to time amended or substituted;
- (e) the singular includes the plural and vice versa and one gender includes the other genders;
- (f) the words "written" and "writing" include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (g) the word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (h) words or expressions defined in the Act or the Listing Rules have the same meaning in this Constitution except as otherwise expressly provided in this Constitution. In the event of any conflict between a word or expression defined in the Act and in the Listing Rules, the meaning in the Listing Rules will prevail unless this will result in a failure to comply with the requirements of the Act or any other legislation or regulatory requirement, where the meaning in the Act will prevail.

1.3 **Powers of Shareholders:** Unless otherwise specified in the Act or this Constitution any power reserved to Shareholders may be exercised, and any approval of Shareholders may be given, by Ordinary Resolution.

2. THE COMPANIES ACT AND THE LISTING RULES

2.1 **Companies Act:** The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.

2.2 **Incorporation of Listing Rules:** While the Company is Listed, those provisions of the Listing Rules which are required to be incorporated by reference in this Constitution, as modified by any Ruling relevant to the Company, will be deemed to be incorporated in this Constitution and be consistent with and have the same effect as though they were set out in full with any necessary modification.

2.3 **NZX rulings:** If NZX has granted a Ruling in relation to the Company authorising any act or omission which in the absence of the Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission will be deemed to be authorised by the Listing Rules and this Constitution.

2.4 **Listing Rules Prevail:** Subject to clause 2.3, while the Company is Listed, if there is any provision in this Constitution that is inconsistent with the Listing Rules relevant to the Company, the Listing Rules will prevail.

2.5 **Compliance with Listing Rules:** Subject to:

- (a) the terms of any Ruling from time to time given by NZX; and
- (b) the requirements of the Act and any other applicable legislative or regulatory requirement,

the Company shall, for so long as it is Listed, comply with the Listing Rules.

2.6 **Effect of failure to comply:** Failure to comply with the Listing Rules does not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at any meeting of Equity Security holders, or other matter entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the non-compliance is not entitled to enforce that transaction or contract. This provision does not limit the rights of Equity Security holders of the Company against the Company or the Directors.

2.7 **ASX Listing Rules:** The Board may from time to time decide whether to apply for, or continue or discontinue, the listing of the Company on the Official List of the ASX. Subject always to clause 2.4, if the Company is admitted to the Official List of the ASX, the following clauses apply:

- (a) Notwithstanding anything contained in this Constitution, if the ASX Listing Rules that are applicable to the Company prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Constitution prevents an act being done that the ASX Listing Rules that are applicable to the Company require to be done.
- (c) If the ASX Listing Rules that are applicable to the Company require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case maybe).
- (d) If the ASX Listing Rules that are applicable to the Company require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
- (e) If the ASX Listing Rules that are applicable to the Company require this

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Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.

- (f) If any provision of this Constitution is or becomes inconsistent with the ASX Listing Rules that are applicable to the Company, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

3. RIGHTS ATTACHING TO SHARES

3.1 **Existing ordinary Shares:** Each ordinary Share in the Company at the date of adoption of this Constitution confers on the holder the following rights (in addition to the rights set out elsewhere in this Constitution):

- (a) subject to the rights of holders of any Shares or other Equity Securities which confer special rights as to dividends, the right to an equal Share in dividends authorised by the Board; and
- (b) subject to the rights of holders of any Shares or other Equity Securities which confer special rights as to surplus assets, the right to an equal Share in the Distribution of surplus assets of the Company.

3.2 **New Shares:** Subject to clause 4, further Shares in the Company (including different Classes of Equity Securities) may be issued which:

- (a) rank equally with, or in priority to, existing Shares in the Company; or
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or Distributions or otherwise; or
- (c) confer preferential rights to Distributions of capital or income; or
- (d) confer special, limited or conditional voting rights; or
- (e) do not confer voting rights; or
- (f) are redeemable in accordance with section 68 of the Act; or
- (g) are Convertible; or
- (h) have any one or more of the rights or limitations set out in paragraphs (a) to (g).

3.3 **Alteration of Rights:** The issue by the Company of any further Equity Securities which rank equally with, or in priority to, any existing Equity Securities, whether as to voting rights or Distributions, shall:

- (a) be permitted (subject to clause 4); and
- (b) not be deemed to be an action affecting the rights attached to those existing Equity Securities.

4. ISSUE OF NEW EQUITY SECURITIES

4.1 **Issue of new Equity Securities:** The Board may issue Equity Securities to any person and in any number it thinks fit provided that while the Company is Listed, the issue is made in compliance with the Listing Rules. The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Equity Securities by the Company.

4.2 **Consolidation and subdivision of Shares:** Subject to any applicable provisions of

the Listing Rules, the Board may:

- (a) consolidate and divide Shares or Shares of any Class in proportion to those Shares or the Shares in that Class; or
- (b) subdivide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class.

4.3 **Bonus issues:** Subject to any applicable provisions of the Listing Rules, the Board may resolve to apply any amount which is available for Distribution to Shareholders either:

- (a) in paying up in full Shares or other Financial Products of the Company to be issued credited as fully paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (ii) if applicable, the holders of any other Financial Products of the Company who are entitled by the terms of issue of those Financial Products to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in paragraph (a)(i); or
- (c) partly as set out in paragraph (a)(i) and partly as set out in paragraph (a)(ii).

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4.4 **Treasury Stock:** The transfer by the Company of Treasury Stock of the Company shall be deemed to constitute the issue of Equity Securities.

4.5 **Entitlements to Third Party Financial Products:** Entitlements conferred by the holding of Equity Securities of the Company, to Financial Products of a third party (whether or not that third party is an Issuer), shall not be created or conferred other than in compliance with this clause 4, as if such Financial Products comprised an issue of Equity Securities of the Company.

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5. BUYBACKS AND REDEMPTIONS OF SHARES AND FINANCIAL ASSISTANCE

5.1 **Powers:** The Company may in accordance with the provisions, and subject to the restrictions, of the Act, this Constitution and the Listing Rules:

- (a) purchase or otherwise acquire Shares issued by it from one or more Shareholders;
- (b) purchase or otherwise acquire other Equity Securities from one or more holders;
- (c) hold any Shares or other Equity Securities so purchased or acquired; and
- (d) redeem any redeemable Shares or other Equity Securities held by one or more holders:

- (i) at its option; or
- (ii) at the option of the holder of the Shares or other Equity Securities if permitted by the terms of issue; or
- (iii) on a date specified in this Constitution or the terms of issue of the Shares or other Equity Securities,

in each case for a consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified person who is not associated with or interested in the Company as provided in section 68 of the Act.

5.2 **Permitted financial assistance:** The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of any Shares or other Equity Securities issued, or to be issued, by the Company unless the giving of that assistance is in accordance with the provisions of the Act and the Listing Rules.

6. CALLS ON SHARES

6.1 **Ability to Call:** Subject to the terms of issue of any Share, the Board may resolve to require the holders of unpaid or partly paid Shares to pay all or part of the amount unpaid on the Shares. Notice of the Call must be given to the holder at the time of the Call or to a subsequent holder of the Shares. Failure to give notice to a holder will not invalidate a Call but it will not be payable by that holder until the notice has been served on the holder. The notice must specify the day by which and the place at which the Call must be paid. Notice of a Call sent by post to a holder to the address recorded in the Register as the address of the holder, will be deemed to have been served on the holder the day after it was posted. Subject to clause 6.9, a Call may be revoked or postponed at any time by the Board.

6.2 **Call deemed made:** A Call shall be deemed to have been made at the time when the resolution of the Board authorising the Call was passed and may be required to be paid by instalments.

6.3 **Joint holders' liability:** The joint holders of a Share shall be jointly and severally liable to pay all calls in respect of that Share.

6.4 **Unpaid Calls to accrue interest:** Subject to clause 6.9, if a sum called in respect of a Share is not paid before or on the day appointed for payment, the person from whom the sum is due will be liable to pay interest on the sum (from the day appointed for payment to the time of actual payment) at such rate as the Board may determine either at the time of the Call or subsequently. The Board may at its discretion waive payments of any such interest either in whole or in part.

6.5 **Payment on allotment:** Any sum which by the terms of issue of a Share becomes payable on allotment or at any fixed date shall for the purposes of this Constitution be deemed to be a Call duly made and payable on the date on which by the terms of issue the same becomes payable and in case of non-payment all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a Call duly made and notified.

6.6 **Proof of Holding:** On the trial or hearing of any action for the recovery of any money due for any Call it shall be sufficient to prove that the name of the holder of the Share sued is entered in the Register of the Company as the holder or one of the holders of the Shares in respect of which such debt accrued, that the resolution making the Call is duly recorded in the records of the Company and that notice of

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such Call was duly given to the holder sued in pursuance of this Constitution; and it shall not be necessary to prove the appointment or qualification of the Directors who made such call nor any other matter whatsoever; and the proof of the matters aforesaid shall be conclusive evidence of the debt.

6.7 **Directors' discretion to differentiate:** The Board may, on the issue of Shares, by agreement with the holders concerned, differentiate between the holders as to the amounts to be paid and the times of any Calls or payment.

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6.8 **Payments in advance:** The Board may if it thinks fit receive from any holder of Securities willing to advance the same all or any part of the money uncalled and unpaid upon any Securities held by that holder and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate as may be agreed upon between the Board and the holder of Securities paying the sum in advance; but no holder shall be entitled as of right to any interest on any money so paid in advance and the Board may decline to pay any interest. The Board may at any time repay the amount so advanced upon giving to the holder of Securities three months' notice in writing.

6.9 **Cancellation of amount due:** No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

7. LIEN ON SHARES

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7.1 **Lien on unpaid and partly paid Shares:** The Company shall have a first and paramount lien on every Share which is not a fully paid Share (and on any dividends or other Distributions from time to time declared in respect of that Share) for:

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(a) all unpaid calls, instalments, premiums, or other amounts, and any interest payable on such amounts, relating to that Share; and

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(b) any amount the Company may be called upon to pay under any legislation in respect of that Share, whether or not the due date for payment has passed.

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7.2 **Power of sale:** If any amount due in respect of a Share on which the Company has a lien is unpaid for more than 10 working days after notice in writing demanding payment has been given to the holder or the person entitled to receive notices in respect of that Share:

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(a) the Company may sell the Share on such terms as the Board determines; and

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(b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Share to, or at the direction of, the purchaser.

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7.3 **Absolute title of purchaser:** The title of a purchaser of any Shares sold pursuant to clause 7.2 shall not be affected by any irregularity or invalidity in any sale.

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7.4 **Application of sale proceeds:** The net proceeds of sale of any Share sold pursuant to clause 7.2, after deducting expenses of sale shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts and the balance (if any) shall be paid to the owner immediately prior to the sale, or to the executors, administrators or assigns of that person. The remedy of any person aggrieved by such sale shall be in damages only and against the Company exclusively.

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8. FORFEITURE OF SHARES

8.1 **Notice:** If a Call on a Share is not paid when due, the Board may give 10 working days notice to the holder requiring payment of the Call, together with interest on the

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amount of the Call. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Share will be liable to be forfeited.

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8.2 **Forfeiture:** If the notice is not complied with the Share may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.

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8.3 **Sale of forfeited Securities:** A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board determines. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.

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8.4 **Application of sale proceeds:** The net proceeds of sale of any forfeited Share shall be applied in the same manner as set out in clause 7.4.

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8.5 **Absolute title of purchaser:** The title of a purchaser of a forfeited Share shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Share.

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8.6 **Consequences of forfeiture:** A person whose Shares have been forfeited shall cease to be a holder in respect of those Shares and shall surrender the Share certificate (if any) for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Shares together with interest thereon.

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8.7 **Evidence of forfeiture:** A statutory declaration by a Director or any other person authorised by the Board that a Share has been forfeited on a specified date shall be conclusive evidence of that forfeiture.

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9. TRANSFER OF SHARES

9.1 **Right to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share:

- (a) by an instrument of transfer which complies with this Constitution; or
- (b) under a system of transfer approved under sections 376 to 378 of the FMC Act which is applicable to the Company.

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9.2 **Financial Markets Conduct Act:** A Share which is disposed of in a transaction to which the provisions of the FMC Act apply may be transferred in accordance with the provisions of that Act. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of that Act if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the Share Registrar.

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9.3 **Other forms of transfer:** An instrument of transfer of Shares to which the provisions of clause 9.2 are not applicable shall:

- (a) be in any common form or any other form approved by the Company;
- (b) be signed or executed by or on behalf of the transferor;
- (c) if registration as holder of the Share imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.

9.4 **Delivery to Company:** An instrument transferring Shares must be delivered to the Company or to the Share Registrar, together with the Share certificate (if any) relating to those Shares, and the transferee shall provide such evidence as the Company or

the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

9.5 **Board may refuse to register:** Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may refuse to accept or register a transfer of any Share if:

- (a) the Company has a lien on the Share;
- (b) in the case of a transfer by an instrument in writing, it is not accompanied by the relevant Share certificate (if any);
- (c) the transferor fails to produce such evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share; or
- (d) registration, together with completion of any further transfers then held by the Company and awaiting registration, would result in the proposed transferee or a transferor having a holding below a Minimum Holding.

9.6 **When transfer effective:** A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.

9.7 **Company to retain transfer:** If the Company registers an instrument of transfer it shall retain the instrument.

9.8 **Multiple Registers:** The Share Register may, by resolution of the Board, be divided into two or more Registers, which may be kept in different places, and may be kept by one or more Share Registrars.

9.9 **Compulsory disposal when holding less than Minimum Holding:** The Board may at any time give notice to a Shareholder holding less than a Minimum Holding of Shares of any Class requiring them to purchase additional Shares in the Company such that if at the expiration of three months after the date the notice is given the Shareholder still holds less than a Minimum Holding of Shares of that Class, the Board may exercise the power of sale of those Shares set out in this clause. If that power of sale becomes exercisable:

- (a) The Board may arrange for the sale of the relevant Shares on behalf of the Shareholder, through the NZSX, or in some other manner approved by NZX.
- (b) The Shareholder shall be deemed to have authorised the Company to act on behalf of the Shareholder in relation to the sale of the relevant Shares, and to sign all necessary documents relating to such sale.
- (c) The Company shall account to the Purchaser for the net proceeds of sale (after deduction of reasonable sale expenses) which shall be held on trust by the Company for, and paid (together with interest at such rate (if any) as the Board deems appropriate) to, the Shareholder, on surrender of the certificate (if any) relating to the relevant Shares.
- (d) The title of the purchaser of any Shares sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of the Company shall be a good discharge to the purchaser for the purchase price.

9.10 **Where Shareholder cannot be located:** If the Company reasonably determines that

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a Shareholder no longer resides at, or cannot be contacted by posting to, the address supplied by that Shareholder to the Company (including by failure of that Shareholder to respond within two months to two or more requests to reply to the Company, whether before or after the date of adoption of this provision) then the Company may thereafter treat that Shareholder as “**Gone No Address**” or “**GNA**” and the following provisions will apply to that Shareholder and the Shares then registered in that Shareholder’s name:

- (a) The Board may arrange for the transfer of the Shares registered in the name of the Shareholder to a wholly-owned subsidiary of the Company (“**TrustSub**”).
- (b) The GNA Shareholder shall be deemed to have authorised the Company to act on behalf of the GNA Shareholder in relation to the transfer of the relevant Shares, and to sign all necessary documents relating to such transfer.
- (c) TrustSub shall hold the relevant Shares on trust for the GNA Shareholder in accordance with the provision of this clause.
- (d) During the period that such Shares are held by TrustSub, the provisions of clause 29.9 shall continue to apply to any dividend paid as if such Shares were registered in the name of the relevant GNA Shareholder but, except as provided by this clause, the GNA Shareholder will not be recognised otherwise as a Shareholder for the purposes of this Constitution.
- (e) At any time while the relevant Shares are held by TrustSub the GNA Shareholder may by notice to the Company establish his or her rights in relation to the Shares, notify the Company a current address for communications from the Company and request that the Shares are re-transferred to the GNA Shareholder. On receipt of such request, the Company will register a transfer of the Shares from TrustSub to the GNA Shareholder.
- (f) If Shares transferred from a GNA Shareholder have been held on trust by TrustSub for 3 years or more, TrustSub may, but is not obliged to, sell those Shares on NZSX and thereafter the net proceeds of sale shall be held on the same trust for the GNA Shareholder (and be subject to the provisions of the Unclaimed Moneys Act, as applicable).
- (g) The title of the purchaser of any Shares sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of TrustSub shall be a good discharge to the purchaser for the purchase price.

9.11 **Financial products other than Shares:** The provisions of this clause 9 shall apply, with any necessary modifications, to **Financial Products** of the Company other than Shares except to the extent (if any) provided otherwise by the terms of issue of such **Financial Products**, by the Listing Rules, or by law.

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10. TRANSMISSION

10.1 **Transmission on death of holder:** If a holder of Shares dies the survivor, if the deceased was a joint Shareholder, or the holder's Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased holder. Nothing in this clause 10.1 shall release the estate of a deceased joint holder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.

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10.2 **Rights of Personal Representatives:** A holder's Personal Representative:

(a) is entitled to exercise all rights (including without limitation the rights to receive Distributions, to attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the Shares held by that holder; and

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(b) is entitled to be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this paragraph (b).

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10.3 **Joint Personal Representatives:** Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.

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10.4 **Refusal of Transfer:** Notwithstanding the provisions of clauses 10.1 to 10.3 the Board has the same right to refuse or suspend registration of a transfer of Shares as it would have had in the case of a transfer of the Shares by that holder of Shares before the appointment of the Personal Representative.

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11. EXERCISE OF POWERS OF SHAREHOLDERS

11.1 **Methods of holding meetings:** A meeting of Shareholders may be held either:

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(a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

(b) if determined by the Board:

(i) by means of audio, audio and visual, and / or electronic communication by which all Shareholders participating and constituting a quorum, can reasonably be expected to be able to hear each other simultaneously throughout the meeting; or

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(ii) by a combination of both the methods described in clauses 11.1(a) and 11.1(b)(i).

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The Company is not required to hold meetings of shareholders in the manner specified in clauses 11.1(b)(i) or (ii). Meetings will be held in that manner only if the notice of meeting so specifies or the Board otherwise decides that the Company should do so. To avoid doubt, if a meeting is held in the manner specified in clauses 11.1(b)(i) or (ii), a shareholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

11.2 **Place for holding meetings:** For so long as the Company is Listed, any physical meetings of Shareholders held under clause 11.1(a) or 11.1(b)(ii) must be held:

(a) in New Zealand; or

- (b) in Australia if Shareholders in New Zealand may participate in the meeting by audio, audio and visual, and/or electronic means; or
- (c) as otherwise permitted by the Listing Rules.

11.3 **Powers exercisable by Ordinary Resolution:** Unless otherwise specified in the Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised by an Ordinary Resolution.

12. MEETINGS OF SHAREHOLDERS

12.1 **Annual meetings:** The Company shall hold an annual meeting in each calendar year, in addition to any other meetings in that year, not later than:

- (a) 6 months after the balance date of the Company; and
- (b) 15 months after the previous annual meeting.

12.2 **Time and place of annual meeting:** Each annual meeting shall be held at such time and place as the Board appoints.

12.3 **Special meetings:** All meetings of Shareholders, other than annual meetings, shall be called special meetings.

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12.4 **Calling of special meetings:** A special meeting:

- (a) may be called by the Board at any time;
- (b) shall be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

12.5 **Equity Security holders entitled to attend:** Equity Security holders of all Classes are entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued generally to the holders of all Financial Products, entitled to vote at meetings of Shareholders but are not entitled to vote at any such meeting unless the terms of the relevant Equity Securities so provide.

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12.6 **Meetings of Interest Groups:** A meeting of the Shareholders constituting an Interest Group may be called by the Board at any time. All the provisions of this Constitution relating to meetings of Shareholders shall apply, with all necessary modifications, to meetings of Interest Groups, except that:

- (a) the necessary quorum for a meeting is one Shareholder having the right to vote at the meeting, present in person or by Representative;
- (b) any Shareholder in the relevant Interest Group, present in person or by Representative, may demand a poll; and
- (c) if the Board so elects, one meeting may be held of Shareholders constituting more than one Interest Group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of the Shareholders in each Interest Group.

13. NOTICE OF MEETINGS OF SHAREHOLDERS

13.1 **Written notice:** Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting and to every Director, and to the auditor of the Company, not less than 10 Working Days before the meeting, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as

those Shareholders agree.

13.2 **Contents of notice:** A notice of meeting must:

- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
- (b) state the text of any Special Resolution to be submitted to the meeting or the text of any resolution to be put to the meeting required under the Listing Rules;
- (c) contain or be accompanied by sufficient explanation, reports, valuations, and other information, as to enable a reasonable person entitled to vote to understand the effect of each resolution proposed, including a statement outlining who is subject to voting restrictions in relation to such resolution;
- (d) in the case of special resolutions required by section 106(1)(a) or (b) of the Act, the right of a shareholder under section 110 of the Act;
- (e) that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder; and
- (f) for so long as the Company is Listed, comply with the requirements of the Listing Rules.

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13.3 **Form of resolutions:** So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.

13.4 **Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.

13.5 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the non-receipt or late receipt of notice of a meeting by, any person entitled to receive notice, does not invalidate the proceedings at the meeting.

13.6 **Notice of adjourned meeting:** If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 13.1.

14. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

14.1 **Requirement for quorum:** Subject to clause 14.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

14.2 **Quorum:** Subject to clause 14.3, a quorum for a meeting of Shareholders is five Shareholders having the right to vote at the meeting present in person or by Representative.

14.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called by the Board on the written request of Shareholders entitled to exercise that right, the meeting is dissolved;
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Board may appoint and notifies to NZX and, if at the adjourned

meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.

- 14.4 **Regulation of procedure:** Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the procedure at meetings of Shareholders.
- 14.5 **Adjournment of meeting:** The chairperson may (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.
- 14.6 **Dissolution of disorderly meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefor, dissolve the meeting.
- 14.7 **Completion of unfinished business if meeting dissolved:** If a meeting is dissolved by the chairperson pursuant to clause 14.6, the unfinished business of the meeting shall be deemed to have been dealt with as follows:
- (a) in respect of a resolution concerning the approval or authorisation of a Distribution; that the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such Distribution; and
 - (b) in respect of a resolution concerning the remuneration of the auditors; that the Board be authorised to fix the remuneration of the auditors.
- 14.8 **Taking of a poll prior to dissolution:** If a meeting is dissolved by the chairperson pursuant to clause 14.6, the chairperson may, as part of that decision, direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll, in accordance with clause 18.4, without further discussion whereupon such poll shall be conducted immediately and the meeting deemed dissolved on conclusion of the taking of such poll.

15. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 15.1 **Chairperson:** If the Directors have elected a chairperson of the Board, and he or she is present at a meeting of Shareholders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.
- 15.2 **Directors may appoint chairperson:** If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.
- 15.3 **Shareholders may appoint chairperson:** If at any meeting of Shareholders no Director is willing to act as chairperson or no Director is present within 15 minutes after the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

16. VOTING AT MEETINGS OF SHAREHOLDERS

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16.1 **Voting at meeting in one place:** In the case of a meeting of Shareholders held under clause 11.1(a), unless a poll is demanded in accordance with clause 18.1 or is required under the Listing Rules, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.

Voting at audio/visual meeting: In the case of a meeting of Shareholders held under clause 11.1(b), unless a poll is demanded in accordance with clause 18.1 or is required under the Listing Rules, voting at the meeting shall be by any method permitted by the chairperson of the meeting.

16.2 **Postal votes:** Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act (relating to postal votes) shall apply, with such modifications (if any) as the Board thinks fit.

16.3 **Entitlement to vote:** A Shareholder may exercise the right to vote either in person or by Representative.

16.4 **Number of votes:** Subject to clauses 17.1 and 17.2 and to any rights or restrictions for the time being attached to any Share:

(a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote; and

(b) on a poll every Shareholder present in person or by Representative has:

(i) in respect of each fully paid Share held by that Shareholder, one vote; and

(ii) each Share which is not fully paid shall carry only a fraction of the vote or votes which would be exercisable if that Share were fully paid. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

provided that for the purposes of this clause 16.5, a Share which is not fully paid is not of the same Class as a fully paid Share.

16.5 **Vote of overseas protected persons:** A Shareholder who is not living in New Zealand, and who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Shares held by that Shareholder, by his or her committee, manager, curator bonis, or other person of a similar nature appointed by that court, voting in person or by proxy.

16.6 **Declaration by chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 18.1.

16.7 **Joint Shareholders:** Where two or more persons are registered as joint Shareholders, the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

16.8 **Electronic appointments and postal votes:** The Board may permit, in relation to a particular meeting or generally:

(a) the appointment of proxies or Representatives to be made by electronic means;
and

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(b) postal votes to be cast by electronic means.

The procedures in relation to such electronic appointment or electronic postal voting shall be those required by law (if any) together with any other procedures determined by the Board. If the Board permits electronic appointment of proxies or Representatives or electronic postal voting in accordance with this clause, such electronic appointments may be made or electronic postal votes cast notwithstanding any other provision of this Constitution.

16.9 **Shareholder participation in meetings by electronic means:** A shareholder, or the shareholder's proxy or Representative, may participate in a meeting (including by casting votes on resolutions) by means of audio, audio and visual, or electronic communication if:

(a) the Board approves those means; and

(b) the shareholder, proxy or Representative complies with any conditions imposed by the Board in relation to the use of those means (including, for example, conditions relating to the identity of the shareholder, proxy or Representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).

17. RESTRICTIONS ON VOTING

17.1 **No vote when amount owing on Share:** A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.

17.2 **Voting restrictions:** Notwithstanding anything to the contrary in this Constitution or the Listing Rules or the Act, a person is unable to vote in favour of a resolution when that person is disqualified from doing so by virtue of the voting restrictions specified in the Listing Rules unless that person is permitted to vote by an exception to those voting restrictions contained in the Listing Rules.

17.3 **Resolution or Proceeding not Void:** No resolution of, or proceeding at, a meeting of Financial Product holders will be void, on the basis of a breach of clause 17.2.

18. POLLS

18.1 **Right to demand poll:** At a meeting of Shareholders a poll may be demanded by:

- (a) the chairperson; or
- (b) not less than five Shareholders having the right to vote at the meeting; or
- (c) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
- (d) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.

18.2 **When poll may be demanded:** A poll may be demanded either before or immediately after the declaration by the chairperson of the result of the vote in respect of a resolution. The demand for a poll may be withdrawn.

18.3 **When poll taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any

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other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

18.4 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.

18.5 **Votes:** On a poll:

- (a) votes may be given either personally or by Representative;
- (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares; and
- (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

18.6 **Scrutineers:** Except as may be required by NZX pursuant to the Listing Rules, the chairperson of the meeting shall appoint the scrutineers for the purpose of any poll.

18.7 **Declaration of result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers setting out the maximum number of votes that could be cast at the meeting and stating that sufficient votes to determine the result of the resolution have been counted.

19. PROXIES AND CORPORATE REPRESENTATIVES

19.1 **Proxies permitted:** A Shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

19.2 **Form of proxy:** A proxy must be appointed by notice in writing in the form directed by the Board signed by, or in the case of electronic notice, sent by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term. _

(a) The proxy form must:

- (i) as a minimum (so far as the subject matter and form of the resolutions reasonably permit) provide for a binary voting choice (for and against) on all resolutions, enabling the Shareholder to instruct the proxy as to casting of the vote;
- (ii) not be sent with any name or office (e.g., "chairperson of directors") filled in as a proxy holder; and
- (iii) contain a statement outlining who is subject to voting restrictions in relation to each resolution.

(b) Notwithstanding clause 19.2(a), the Company may provide a proxy form that:

- (i) if, in appointing a proxy, a Shareholder does not name a person as their proxy but otherwise completes the proxy form in full; or
- (ii) a Shareholder's named proxy does not attend the meeting.

a named person or office will act as that Shareholder's proxy and vote in accordance with their express direction. If such statement is included in the proxy form, the proxy form and notice of meeting must:

- (iii) clearly and prominently disclose the intention to appoint a named person or office in the circumstances set out in clause 19.2(b)(i) and (ii), and
- (iv) provide that the named person or office acting as proxy must:
 - A. only vote in accordance with the express directions of the relevant Quoted Financial Product holder; and
 - B. not vote on a resolution if expressly granted a discretion on how to vote on a resolution and such resolution is subject to a voting restriction that applies to the proxy under the Listing Rules.

19.3 **Lodging proxy:** No proxy is effective in relation to a meeting unless the proxy form is received by or on behalf of the Company at any place specified for the purpose in the notice of meeting. The notice of meeting may provide for different matters for different kinds of proxies (for example, a different specified time for the receipt of a proxy by electronic means). In any case, the time or times specified may not be more than 48 hours before the start of the meeting. If the written notice appointing a proxy is signed under power of attorney, a signed certificate of non-revocation of power of attorney must accompany that notice.

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19.4 **Validity of proxy vote:** A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

19.5 **Corporate representatives:** A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. A representative shall have the same rights and powers as if the representative were a proxy.

20. MINUTES OF SHAREHOLDER MEETINGS

The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings.

21. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

21.1 **Shareholder proposals:** A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this clause 21.1.

21.2 **Management review by Shareholders:** The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but no such resolution is binding on the Board.

22. DIRECTORS

- 22.1 **Number of Directors:** The minimum number of Directors is three. The maximum number of Directors is to be fixed by the Directors in accordance with the Listing Rules, but must not be more than 7 unless the Company in general meeting determines otherwise. The Directors must not determine a maximum which is less than the number of directors in office at the time the determination takes effect. At least two Directors must be persons who are ordinarily resident in New Zealand and at least two Directors must be Independent Directors.
- 22.2 **Appointment by Shareholders:** Subject to clause 22.1, a person may be appointed as a Director at any time by an Ordinary Resolution.
- 22.3 **Appointment by Board:** Subject to clause 22.1, the Board may at any time appoint a person to be a Director. A Director so appointed holds office only until the next annual meeting of the Company but is eligible for re-election at that meeting.
- 22.4 **Existing Directors to continue:** The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution.
- 22.5 **Rotation of Directors:** For as long as the Company is Listed, a Director (including a Managing Director) must not hold office (without re-election) past the third shareholders' annual meeting following the Director's appointment.
- 22.6 **Re-election of retiring Director:** A Director retiring by rotation at a meeting shall, if standing for re-election, be deemed to have been re-elected unless:
- some other person is elected to fill the vacated office; or
 - it is resolved not to fill the vacated office; or
 - a resolution for the re-election of that Director is put to the meeting and lost.
- 22.7 **Nomination of Directors:** No person may be elected as a Director at a meeting (other than a Director retiring at the meeting) unless, not more than two months before the meeting, that person has been nominated by a Equity Security holder entitled to attend and vote at the meeting by written notice to the Company accompanied by the consent in writing of that person to the nomination. Notice of every valid nomination of a Director received by the Company before the closing date for nominations shall be sent by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of meeting.
- 22.8 **Restriction on appointment of several Directors by single resolution:** No resolution to appoint, elect or re-elect a Director shall be moved unless the resolution is for the appointment, election or re-election of one Director only.
- 22.9 **Vacation of office:** A Director ceases to be a Director if he or she:
- is removed from office by an Ordinary Resolution; or
 - dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
 - resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
 - becomes disqualified from being a Director pursuant to the Act; or
 - becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or

Deleted: At the annual meeting of the Company in each year one third of the Directors, or if their number is not a multiple of three then the number nearest to one third, shall retire from office. The Directors to retire shall be those who have been longest in office since they were last elected or deemed elected. If two or more of those Directors were last elected on the same day, the Directors to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Director is eligible for re-election.†

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- (f) has for more than six months been absent without approval of the Board from all meetings of the Board held during that period.

23. ALTERNATE DIRECTORS

23.1 **Power to appoint:** A Director may from time to time by written notice to the Company appoint any person, who is not already a Director to be that Director's alternate. ~~No Director may make such an appointment except with the consent of a majority of his or her co-Directors. A Director may not act as an alternate for another Director.~~ No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under this section 23.

Deleted: and who is approved by a majority of the other Directors, to be that Director's alternate.

23.2 **Rights of Alternate Director:** Unless otherwise specified by the terms of his or her appointment, an Alternate Director:

- (a) is entitled, in the absence or unavailability of the Director who appointed him or her (the "**Appointor**"), to exercise the same rights, powers and privileges (other than the power to appoint an Alternate Director) as the Appointor;
- (b) when acting as an Alternate Director is subject to the same duties and obligations as the Appointor; and
- (c) is not entitled to be given notice of a meeting of the Directors unless the Appointor has given written notice to the Company requesting that notice be given to the Alternate Director.

23.3 **Remuneration and expenses:** An Alternate Director is not entitled to any remuneration from the Company in his or her capacity as an Alternate Director but is entitled to be reimbursed by the Company for all expenses incurred in attending meetings of the Directors and in the discharge of his or her duties, to the same extent as if he or she were a Director.

23.4 **Cessation of appointment:** An Alternate Director ceases to be an Alternate Director:

- (a) if the Appointor ceases to be a Director, or revokes the appointment by written notice to the Company; or
- (b) on the occurrence of any event which would disqualify the Alternate Director if he or she were a Director; or
- (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

24. MANAGING DIRECTORS

24.1 **Appointment:** The Board may from time to time appoint one or more Directors to the office of Managing Director for such period not exceeding ~~three~~ years, and on such terms, as the Board thinks fit and, subject to the terms of any agreement entered into in any particular case, may at any time revoke such appointment.

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24.2 **Resignation:** A Managing Director is subject to the same provisions as regards resignation, removal, and disqualification as the other Directors, and if a Managing Director ceases to hold the office of Director from any cause he or she automatically ceases to be a Managing Director, but shall otherwise continue as an officer, employee, or otherwise as provided by any agreement in any particular case.

Deleted: <#>Not subject to rotation: A Managing Director is not liable to retire by rotation under clause 22.5 while holding that office, unless there is more than one Managing Director, in which event the Board may nominate one Managing Director who is not to be liable to retire by rotation. ¶

24.3 **Remuneration:** A Managing Director is entitled to receive such remuneration for his or her services as an employee (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Board may determine.

25. PROCEEDINGS OF BOARD

25.1 **Third schedule of Act not to apply:** The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

25.2 **Alternative forms of meeting:** A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by a conference between Directors some or all of whom are in different places, provided that each Director who participates is able:
 - (i) to hear each of the other participating Directors addressing the meeting; and
 - (ii) if he or she so wishes, to address each of the other participating Directors simultaneously, whether directly, by conference telephone or by another form of communications equipment (whether in use when this Constitution is adopted or developed subsequently) or by a combination of such methods.

Where two or more Directors participate from New Zealand in a meeting held in this way, the meeting shall be deemed to take place in New Zealand at the place agreed between such Directors. Where one Director participates from New Zealand in a meeting held in this way, the meeting shall be deemed to take place at the place from where that Director participates. Where no Director participates from New Zealand in a meeting held in this way, the meeting shall be deemed to take place at the place where the chairman of the meeting participates. Any Director may, by prior notice to a senior officer of the Company, indicate that he or she wishes to participate in the meeting in the abovementioned manner in which event the Director shall procure that an appropriate conference facility is arranged. A Director participating in this way is deemed to be present in person at the meeting and shall be counted in the quorum and entitled to vote to the extent otherwise allowed by this Constitution.

25.3 **Procedure:** Except as provided in this Constitution, the Board may regulate its own procedure.

25.4 **Notice of meeting:** The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings or as provided in clause 25.5):

- (a) Not less than two business days' notice of a meeting of the Board shall be sent to each Director in all circumstances, unless:
 - (i) the Director waives that right; or
 - (ii) a shorter period of notice is required to enable the Board to comply with its obligations under the Listing Rules; or
 - (iii) the issue which is to be the subject of the meeting is, in the reasonable opinion of a majority of the Directors, a matter of urgency, in which event such notice as is practicable in the circumstances shall be still sought to be given to each such Director.
- (b) Notice to a Director of a meeting of the Board may be:
 - (i) given to the Director in person by telephone or other oral communication;

- (ii) delivered to the Director;
 - (iii) posted to the address given by the Director to the Company for such purpose;
 - (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (v) sent by another form of communications equipment in accordance with any request made by the Director from time to time for such purpose.
- (c) A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of conference telephone or by another form of communications equipment, the manner in which each Director may participate in the proceedings of the meeting.
- (d) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
- (i) in the case of oral communication, at the time of notification;
 - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (iii) in the case of posting, at the time of receipt which in the absence of proof to the contrary shall be considered to be three days after it is posted;
 - (iv) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director; or
 - (v) in the case of another form of communications equipment, at the time of transmission.

25.5 **Director may convene meeting:** Without limiting the provisions of clauses 25.3 or 25.4, a Director has the right at any time to convene a meeting of the Board, or to require a senior officer of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less than seven days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.

25.6 **Waiver of notice irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during, or after the meeting) to the waiver.

25.7 **Quorum:** Subject to clause 26.3, a quorum for a meeting of the Board may be fixed by the Directors from time to time, and unless so fixed shall be three Directors. No business may be transacted at a meeting of Directors if a quorum is not present.

25.8 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and so long as the number of Directors holding office is less than the minimum number fixed by clause 22.1, the continuing Directors may act only for the purpose of increasing the number of Directors to that number or of summoning a meeting of the Shareholders.

25.9 **Election of chairperson:** The Directors may from time to time elect a chairperson and

(if they think fit) a deputy chairperson, of their meetings, and determine the period for which they respectively are to hold office. The chairperson, or failing the chairperson the deputy chairperson (if any), shall preside at all meetings of the Directors but if no such chairperson or deputy chairperson is elected, or if at any meeting the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

- 25.10 **Voting:** Subject to clauses 26.3 and 26.4, every Director has one vote. The chairperson shall not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it are in favour of the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting.
- 25.11 **Written resolution:** A resolution in writing, signed or assented to by all of the Directors (other than a Director who has been granted a leave of absence and has not appointed an Alternate Director) entitled to vote is as valid and effective as if passed at a meeting of the Board provided that the Directors signing or assenting to the resolution would constitute a quorum and would have power to pass the resolution at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution shall be entered in the Records. The Company shall, within seven days after any resolution is passed in accordance with this clause, send a copy of the resolution to each Director who has not signed or assented to the resolution.
- 25.12 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.
- 25.13 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 25.14 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board and its committees. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

26. INTERESTS OF DIRECTORS

- 26.1 **Disclosure of interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 26.2.
- 26.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:
- (a) contract with the Company in any capacity;
 - (b) be a party to any transaction with the Company;
 - (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;

(d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a Shareholder or otherwise; and

(e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

26.3 **Interested Directors may not vote:** A Director who is Interested in a transaction entered into, or to be entered into, by the Company:

(a) may attend a meeting of the Board at which any matter relating to the transaction arises but shall not be included among the Directors present at the meeting for the purposes of a quorum and may not vote on any matter relating to the transaction except as provided in clause 26.4; and/or

(b) may sign a document relating to the transaction on behalf of the Company, and may do any other thing in his or her capacity as a Director in relation to the transaction, as if the Director were not interested in the transaction.

26.4 **Exception to voting prohibition:** Notwithstanding the provisions of clause 26.3(a), a Director may be included among the Directors present at the meeting for the purposes of a quorum and vote in respect of a matter in which he or she is Interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

27. DIRECTORS' REMUNERATION

27.1 **Fixing remuneration:** No remuneration shall be paid to a Director in his or her capacity as a Director of the Company or any Subsidiary, other than a Subsidiary which is Listed (including any remuneration paid to that Director by a Subsidiary, other than a Subsidiary which is also Listed) unless that remuneration has been authorised by an Ordinary Resolution. Each such resolution shall express Directors' remuneration as a monetary sum per annum payable to either:

(a) all Directors taken together; or

(b) any person who from time to time holds office as a Director.

27.2 **Increase in number of Directors:** If remuneration is expressed in accordance with clause 27.1(a), then in the event of an increase in the total number of Directors holding office, the Directors may, without the authorisation of an Ordinary Resolution, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).

27.3 **Notice of increase:** No resolution which increases the amount fixed pursuant to a previous resolution shall be approved at a meeting of the Company unless notice of the amount of increase has been given in the notice of meeting.

27.4 **Board's discretion:** If remuneration is expressed in accordance with clause 27.1(a), the remuneration may be distributed among the Directors in such manner as the Board from time to time determines.

27.5 **Executive Directors:** Executive Directors are not entitled to receive any

remuneration for services as Directors. Nothing in clauses 27.1(a) to 27.3 and this clause, shall affect the remuneration of executive Directors in their capacity as executives.

- 27.6 **Expenses:** Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business.
- 27.7 **Special remuneration:** Notwithstanding clause 27.1, but subject to the Listing Rules applicable to transactions with related parties of the Company, the Board may authorise special remuneration to any Director who is or has been engaged by the Company or a Subsidiary to carry out any work or perform any services which is not in the capacity of a Director of the Company or a Subsidiary.
- 27.8 **Director may hold another office or place of profit:** A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of Director for such period and on such terms (as to remuneration and otherwise) as the Board may determine and no Director or intending Director shall be disqualified from contracting with the Company either with regard to tenure of any such other office or place of profit or as vendor, purchaser, or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested be liable to be avoided nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of the Director holding that office or of the fiduciary relationship thereby established.

28. INDEMNITY AND INSURANCE

- 28.1 **Indemnity of Directors:** Subject to clause 28.3, every Director shall be indemnified by the Company:
- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director or a director of a Subsidiary of the Company and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
 - (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in his or her capacity as a Director or a director of a Subsidiary of the Company, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.
- 28.2 **Other indemnities:** Subject to clause 28.3, every director of a related company, or an employee of the Company or a related company shall be indemnified by the Company:
- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
 - (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.
- 28.3 **Exceptions:** An indemnity conferred by clause 28.1(b) or clause 28.2(b), shall not apply in respect of:

- (a) any criminal liability; or
- (b) in the case of an employee of the Company or a related company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
- (c) in the case of a Director or a director of a related company, any liability in respect of a breach of the duty specified in section 131 of the Act.

28.4 **Insurance:** The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a director or employee of a related company, in respect of:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity; or
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by that Director or employee in defending any criminal proceedings:
 - (i) that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a director or employee; and
 - (ii) in which he or she is acquitted.

28.5 **Definitions:** In this section 28:

- (a) "Director" includes a former Director and "director" includes a former director; and
- (b) other words given extended meanings in section 162(9) of the Act have those extended meanings.

29. DISTRIBUTIONS

29.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test may, subject to the Act and this Constitution including without limitation clause 15.2, authorise Distributions by the Company at times, and of amounts, and to any Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

29.2 **Form of Distribution:** Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit but, except as provided in clause 29.3, the Board shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.

29.3 **Currency of payment:** The Board, if it thinks fit, may differentiate between Shareholders as to the currency in which any Distribution is to be paid. In exercising its discretion the Board may have regard to the registered address of a Shareholder, the Register on which a Shareholder's Shares are Registered and such other matters (if any) as the Board considers appropriate. If the Board determines to pay a Distribution in a currency other than New Zealand currency, the amount payable shall be converted from New Zealand currency in such manner, at such time, and at such exchange rate, as the Board thinks fit.

29.4 **Entitlement to dividends:** The Board shall not authorise a dividend:

- (a) in respect of some but not all the Shares in a Class; or
- (b) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class,

unless the amount of the dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder under this Constitution or under the terms of issue of the Share, but a Shareholder may waive that Shareholder's entitlement to receive a dividend or any part thereof by written notice to the Company signed by or on behalf of the Shareholder.

29.5 **Deduction of money:** The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by that Shareholder.

29.6 **Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.

29.7 **No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

29.8 **Payment of small dividend amounts:** Where the net amount of a dividend payable to a Shareholder is less than such minimum amount as may be determined from time to time by the Board for the purposes of this clause, the Company may, with the prior approval of that Shareholder, defer payment of the dividend to that Shareholder until the earlier of:

- (a) such time as that Shareholder has an aggregate entitlement to net dividends of not less than such minimum amount; and
- (b) the date upon which that Shareholder ceases to hold any Shares.

29.9 **Unclaimed Distributions:** Dividends or other monetary Distributions unclaimed for more than one year after having been authorised, may be used for the benefit of the Company until claimed. All dividends or other monetary Distributions unclaimed for more than five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board shall nevertheless, at any time after such forfeiture, annul the forfeiture and agree to pay a claimant who produces satisfactory evidence of entitlement.

30. NOTICES

30.1 **Method of service:** All notices, reports, accounts and other documents required to be sent:

- (a) to a Shareholder, shall be sent in the manner provided in section 391 of the Act;
- (b) to a holder of any other Equity Security, shall be sent in the same manner, as though that holder were a Shareholder.

30.2 **Service of notices overseas:** If the holder of a Share or other Quoted **Financial Product** has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that holder at such

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address by airmail or by courier and shall be deemed to have been received by that holder 48 hours after the time of posting.

- 30.3 **Accidental omissions:** The failure to send an annual report, notice, or other document to a Shareholder or other Equity Security holder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.
- 30.4 **Joint Shareholders:** A notice may be given by the Company to the joint holders of an Equity Security by giving the notice to the joint holder named first in the Register in respect of that Equity Security.
- 30.5 **Shareholder deceased or bankrupt:** If the holder of an Equity Security dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Act to the Personal Representative of the holder at the address supplied to the Company for that purpose.
- 30.6 **Waiver by Shareholders:** a Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.
- 30.7 **By electronic means:** Where a legal requirement under the Companies Act 1993 is reproduced in this Constitution, the provision of the Constitution that reproduces that legal requirement may be met by using electronic means in accordance with the Electronic Transactions Act 2002 in the same manner as is required by the Electronic Transactions Act 2002 to meet that legal requirement under the Companies Act 1993. In this clause, "legal requirement" has the same meaning given to it by the Electronic Transactions Act 2002.

31. INSPECTION OF RECORDS

- 31.1 **Inspection by Directors:** Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.
- 31.2 **Inspection by Shareholders:** No Shareholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by Shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Shareholders (who are not also Directors).

32. METHOD OF CONTRACTING

- 32.1 **Deeds and material contracts:** A deed or material contract which is to be entered into by the Company may be signed on behalf of the Company, by:
- (a) two or more Directors; or
 - (b) any Director, together with any other person authorised by the Board whose signature must be witnessed; or
 - (c) one or more attorneys appointed by the Company.

33. LIQUIDATION

33.1 **Distribution of assets:** If the Company is liquidated the liquidator may, with the approval of Shareholders and any other sanction required by the Act:

- (a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other **Financial Products** on which there is any liability.

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